



**U.S. Department of Justice**

**Civil Rights Division**

DK:MLB:EKB:JMS:AKT:BS  
DJ 170-51-358

*Employment Litigation Section - PHB*  
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July 13, 2012

**Via ECF**

Hon. Nicholas G. Garaufis  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**Re: United States v. City of New York, et al., 07-CV-2067 (NGG)(RLM)**

Dear Judge Garaufis:

The United States writes in support of the Plaintiffs-Intervenors' Motion to Reconsider Order on Fringe Benefits (Dkt. 912). For the reasons stated in the Plaintiffs-Intervenors' memorandum in support of the Motion (Dkt. 913), the United States respectfully submits that the Court should reconsider its prior decision regarding the value of fringe benefits and adopt the Plaintiffs-Intervenors' proposed approach to determining the amount to award to claimants for lost fringe benefits.

Regardless of whether the Court grants or denies the Plaintiffs-Intervenors' motion, the United States anticipates that discovery regarding lost fringe benefits will be time consuming and require management of a massive amount of documents and information involving claimants' private health information. The burdens associated with this discovery could be compounded because, under the Court's present orders, two separate discovery periods will probably be necessary to determine claimants' economic losses. Specifically, in its back pay Order, the Court determined the amount of aggregate back pay only through the end of 2010 and held that the parties may "move for a finding as to the *additional* aggregate wage loss suffered from the end of 2010 to the date the priority hires joined the FDNY." Dkt. 825 at 46 n.12 (emphasis added). Under this scenario, claimants' economic losses will continue to accrue into the future after the parties have completed the discovery necessary to determine each claimant's back pay award for the period that ended on December 31, 2010. If the parties are required to determine claimants' mitigation and fringe benefit losses between January 1, 2011 and the last date on which a priority hire claimant joins the FDNY, a second discovery period will be needed after the priority hiring process is complete.

In order to increase the efficiency and minimize the burden associated with the collection of information relevant to fringe benefit losses, the United States believes that discovery regarding fringe benefits should only occur once during the claims process. Therefore, as part of

the meet and confer process relating to the submission of a draft Claims Processing Order (*See* Dkt. 907), the United States intends to discuss this issue with the parties and the Special Masters.

Respectfully submitted,

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